

two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act (12 U.S.C. 1817j).

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the acquisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal meeting.

§ 303.83 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of that institution continuously since March 9, 1979, or since that institution commenced business, whichever is later; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has

controlled the bank continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B) respectively of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B));

(5) A customary one-time proxy solicitation;

(6) The receipt of voting shares of an insured state nonmember bank through a pro rata stock dividend; and

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j) (9), (10), and (12)).

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after the acquisition and provides any relevant information requested by the FDIC.

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

Federal Deposit Insurance Corporation

§ 303.86

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the FDIC.

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

(3) Nothing in paragraph (b)(1) of this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.85(c).

§ 303.84 Filing procedures.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate FDIC office and shall contain all the information required by paragraph 6 of the Change in Bank Control Act, section 7 (j) of the FDI Act, (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency form which may be obtained from any FDIC regional director.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate FDIC office immediately of any material changes in a notice submitted to the FDIC, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated

interagency form, together with a statement of any material changes since the date of the statement or summary. The FDIC may require additional information if appropriate.

(b) *Other laws.* Nothing in this subpart shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or other laws.

§ 303.85 Processing.

(a) *Acceptance of notice.* The 60-day notice period specified in § 303.82 shall commence on the date of receipt of a substantially complete notice. The FDIC shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted for processing. The FDIC may request additional information at any time.

(b) *Time period for FDIC action; consummation of acquisition.* (1) The notificant(s) may consummate the proposed acquisition 60 days after submission to the appropriate FDIC office of a substantially complete notice under paragraph (a) of this section, unless within that period the FDIC disapproves the proposed acquisition or extends the 60-day period.

(2) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.86 Public notice requirements.

(a) *Publication—(1) Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located. The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate FDIC office, but in no event more than 10 calendar days before or after the filing date.